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In The
Supreme Court of the United States

October Term, 1958

No. 173

BARNEY FRIEDMAN AND SARAH FRIEDMAN, Husband and Wife, d/b/a CITY METAL SALVAGE COMPANY,

Petitioners,

VERSUS

LEROY HILL,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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AUGUST, 1958.

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TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent, Leroy Hill, prays that the petition for writ of certiorari to the Supreme Court of the State of Oklahoma, prayed for by the petitioners, be denied and in support thereof respectfully submits the following brief in opposition to said petition.

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court under Rule 19, paragraph 1, sub-paragraph (a), of the Rules of the Supreme Court of the United States. We respectfully submit that the decision of the Supreme Court of the State of Oklahoma involves no Federal question. That court refused to review the sufficiency of the evidence because of failure of petitioners to comply with procedural law of the State. See argument under question 2 of this brief.

QUESTIONS PRESENTED FOR REVIEW

1. **That the trial court was without jurisdiction.**
2. **That it was error for the Supreme Court of the State of Oklahoma to refuse to consider the sufficiency of the evidence to support the verdict and judgment of the trial court.**
3. **That there was no justification for liquidated damages.**
4. **That there was a denial of due process of law.**

STATEMENT OF THE CASE

The petitioners will be referred to as defendants and the respondent as plaintiff, as they appeared in the trial court.

The defendants purchased, processed, sold, and shipped into interstate commerce, scrap metals (R. 53, 54, 58). The plaintiff was employed as a night watchman

in the defendants' office (R. 32, 33, 43, 49). Defendants admitted plaintiff was employed as a night watchman in their answer (R. 15). The office, was located on the same premises as the scrap metal yard. In the office, scrap metal was bought and sold and the regular business of the company carried on (R. 58).

The plaintiff brought this action under the terms of the Fair Labor Standards Act of Congress. At the trial of the cause, it was stipulated by the parties (R. 93A), that the court submit to the jury without a general verdict the questions as to the number of weeks plaintiff worked for the defendants and the number of hours each week, and that upon answers to these questions the court render such judgment as the facts and law provide. The jury found that plaintiff worked for defendants 107½ hours a week for 25 weeks (R. 99 and 101), whereupon the court entered judgment for plaintiff for unpaid minimum wages and unpaid overtime compensation ($2,188.50), liquidated damages ($2,188.50), and attorney's fee ($656), in the total amount of $5,033, with interest from date and costs (R. 105).

ARGUMENT

1. That the trial court was without jurisdiction.

We respectfully submit that the trial court had jurisdiction over the subject matter of this action. Likewise, the trial court had jurisdiction over the parties to this

action. The petition stated a cause of action under the Fair Labor Standards Act. There is no dispute as to these facts. Therefore the trial court had jurisdiction. Petitioners argue as jurisdictional, that the evidence was not sufficient to support the verdict or judgment. That is not a jurisdictional question but can be reviewed only by proper appeal. They did not properly present this question to the Supreme Court of Oklahoma for review.

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2. That it was error for the Supreme Court of the State of Oklahoma to refuse to consider the sufficiency of the evidence to support the verdict and judgment of the trial court.

The opinion of the Supreme Court of the State of Oklahoma in this case states:

> "At the conclusion of the plaintiff's evidence in chief, the defendants demurred, and this demurrer was overruled by the Court. Thereafter, the defendants proceeded to introduce evidence in their own behalf and at the conclusion of all the evidence, they did not renew the previous demurrer or move the court to direct a verdict in their favor. Thus the sufficiency of the evidence to sustain the judgment has not been presented for review."

Such is the well-established law in the State of Oklahoma.

L. E. Richardson, d/b/a Richardson's Service Station v. *Shaw*, Okl., 313 P. 2d 520;

Richardson v. *Butler*, 206 Okl. 79, 240 P. 2d 1058;

Wright v. *Linder*, 196 Okl. 493, 166 P. 2d 104.

We respectfully submit that when an action is brought in a state court to enforce a right arising under a Federal statute, its jurisdiction must be invoked in conformity with local law, and the action is governed by the state rules of practice and procedure as to all matters pertaining to the remedy. *Minneapolis and St. Louis R. Co.* v. *Bombolis*, 36 Sup. Ct. 595, 241 U. S. 211, 60 L. Ed. 961, Ann Cas. 1916E 505, L. R. A. 1917A 86; *Central Vermont R. Co.* v. *White*, 35 Sup. Ct. 865, 238 U. S. 507, 59 L. Ed. 1433, Ann Cas. 1916B 252.

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3. That there was no justification for liquidated damages.

In their brief petitioners state that apparently the trial court did not consider that it had any discretion and did not exercise any discretion in determining the question of liquidated damages. This is an assumption not supported by the record. The journal entry shows that the court considered all the facts and upon consideration of those facts allowed the liquidated damages. To escape liquidated damages it is incumbent upon the employer to show that his acts or omissions were in good faith and on reasonable grounds. There is no evidence in the record to show good faith or reasonable grounds. To the contrary, the only evidence going to this point shows a lack of good faith. The record discloses that petitioners attempt to have defendant declared a physically

handicapped person (R. 69). And obtained an application from the Department of Labor for this purpose (R. 71). Showing that petitioners were aware of the fact that defendant was covered under the Act else why go to the trouble of having him declared physically handicapped, if possible, so as to escape coverage.

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4. That there was a denial of due process.

We respectfully submit that argument as to this question would be the same as that presented in answer to Questions 1 and 2 and that no useful purpose would be served by repeating it here.

CONCLUSION

The opinion of the Supreme Court of the State of Oklahoma clearly shows that no Federal question is involved. Certainly none of any substance. The trial court had jurisdiction over the subject matter and over the parties. Trial was had and judgment rendered. Petitioners failed to invoke the jurisdiction of the Supreme Court of Oklahoma to review the sufficiency of the evidence to support the verdict or judgment by their failure to comply with the procedural law of the State. The Supreme Court of Oklahoma followed the settled decisions of this Court that when an action is brought in a state court to enforce a right arising under a Federal statute, the jurisdiction of the state court must be invoked in con-

formity with local law and the action is governed by the state rules of practice and procedure as to all matters pertaining to the remedy. There was no error, no denial of due process of law, and no Federal question is presented for this Honorable Court to consider.

WHEREFORE, respondent most respectfully prays this most Honorable Court to deny petitioner's petition for writ of certiorari.

Most respectfully submitted,

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AUGHST, 1958.

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of this Brief in Opposition to Petition for Writ of Certiorari to John B. Ogden, attorney for petitioners, 1408 Liberty Bank Building, Oklahoma City, Oklahoma on this —— day of August, 1958. by depositing the same in the United States Mail with sufficient postage affixed thereon.

C. E. Ram Morrison